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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 GEORGE MARCINKIEWICZ,
12 Plaintiff,
13 vs.
14 JP MORGAN CHASE formally doing
15 business as WASHINGTON
16 MUTUAL BANK; QUALITY LOAN
SERVICE CORP; and DOES 1
through 50 inclusive,
17 Defendants.

CASE NO. 14-CV-1154-H
(DHB)

**ORDER GRANTING
MOTION TO DISMISS
UNDER RULE 41(b)**

[Doc. No. 9]

18 On July 28, 2014, Defendant JP Morgan Chase (“Defendant” or “JPMorgan”)
19 filed a motion to dismiss Plaintiff’s complaint for failure to amend after JPMorgan’s
20 motion to dismiss was granted with leave to amend. (Doc. No. 9.) Plaintiff George
21 Marcinkiewicz (“Plaintiff”) did not file an opposition. The Court, pursuant to its
22 discretion under Local Rule 7.1(d)(1), submits the motion on the papers and vacates
23 the hearing set for September 2, 2014. The Court grants Defendant’s motion and
24 dismisses Plaintiff’s complaint under Federal Rule of Civil Procedure 41(b).

25 **Background**

26 On April 3, 2014 Plaintiff George Marcinkiewicz filed a complaint in the
27 Superior Court of the State of California. (Doc. No. 1-1.) On May 7, 2014, Defendant
28 JPMorgan, with the consent of Defendant Quality Loan, removed the action based on

1 federal question jurisdiction. (Doc. No. 1 ¶ 3.) On May 14, 2014, JPMorgan filed a
 2 motion to dismiss Plaintiff's complaint. (Doc. No. 5.) On June 19, 2014, the Court
 3 granted Defendant's motion to dismiss without prejudice. (Doc. No. 8 at 9.) The Court
 4 granted Plaintiff thirty days from June 19, 2014 to file an amended complaint. (*Id.*)
 5 Plaintiff did not file an amended complaint within thirty days of June 19, 2014. On
 6 July 28, 2014, Defendant filed a motion to dismiss Plaintiff's complaint with prejudice
 7 under Federal Rule of Civil Procedure 41(b). (Doc. No. 9.) Plaintiff did not file an
 8 opposition to Defendant's motion to dismiss.

9 Discussion

10 Federal Rule of Civil Procedure 41(b) provides that a defendant may move to
 11 dismiss the action or any claims if the plaintiff fails to prosecute or to comply with the
 12 Federal Rules or a court order. Fed. R. Civ. P. 41(b). Under Rule 41(b), the court may
 13 dismiss a claim with prejudice if the plaintiff has failed to amend the complaint within
 14 the time specified by an earlier order. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th
 15 Cir. 1992) (affirming dismissal with prejudice pursuant to Rule 41(b) where plaintiff
 16 failed to amend within the thirty-day period provided in the initial order dismissing the
 17 claims). In determining whether to dismiss a case for failure to amend within the time
 18 provided, the court must consider five factors: "(1) the public's interest in expeditious
 19 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
 20 prejudice to the defendants; (4) the public policy favoring disposition of cases on their
 21 merits; and (5) the availability of less drastic alternatives." *Yourish v. California*
 22 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (citation and internal quotation marks
 23 omitted).

24 Here, Plaintiff did not amend his complaint or provide the Court notice of his
 25 intent not to file an amended complaint within thirty days of the Court's June 19, 2014
 26 order dismissing his claims. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065
 27 (9th Cir. 2004) ("The failure of the plaintiff eventually to respond to the court's
 28 ultimatum—either by amending the complaint or by indicating to the court that it will

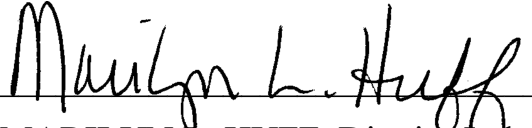
1 not do so—is properly met with the sanction of a Rule 41(b) dismissal.”). Further, as
2 of the date of this Order, Plaintiff has not filed an amended complaint or given notice
3 of his intent not to file. After reviewing the five factors, the Court finds the public’s
4 interest in expeditious resolution of litigation, the Court’s need to manage its docket,
5 the risk of prejudice to Defendant, and the lack of less drastic alternatives support
6 dismissal. See Yourish, 191 F.3d at 990-92; Ferdik, 963 F.2d at 1261-63.
7 Accordingly, dismissal is appropriate under Rule 41(b).

8 **Conclusion**

9 For the foregoing reasons, the Court grants Defendant JPMorgan’s motion to
10 dismiss Plaintiff’s complaint under Rule 41(b).

11 **IT IS SO ORDERED.**

12 DATED: August 28, 2014

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14 MARILYN L. HUFF, District Judge
15 UNITED STATES DISTRICT COURT
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